

FEDERAL COMMUNICATIONS COMMISSION

DA 05-2716

Oct 13 4 02 PM '05

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Barnsboro and Gallitzin, Pennsylvania)

)
)
)
)
)
)

MB Docket No. 05-103
RM-11205

REPORT AND ORDER
(Proceeding Terminated)

Adopted: October 12, 2005

Released: October 17, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division of the Media Bureau has before it for consideration the *Notice of Proposed Rulemaking*¹ proposing changes in the FM Table of Allotments, 47 C.F.R. § 73.202(b). In response to a petition filed by Vernal Enterprises, Inc. ("Vernal"), licensee of Station WHPA(FM), Channel 228A, Barnsboro, Pennsylvania, the *Notice* proposes to change the community of license for Station WHPA(FM) from Barnsboro to Gallitzin, Pennsylvania. Vernal's request was filed pursuant to the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's authorization to specify a new community of license without affording other interested parties the opportunity to file competing expressions of interest in the proposed allotment. Vernal represents that if its request is granted, it will file an application to modify the facilities of Station WHPA(FM) to specify operation on Channel 228A at Gallitzin, Pennsylvania. Vernal filed comments supporting the changes proposed in the *Notice*.

2. In determining whether to approve a change of community, we compare the existing versus the proposed arrangement of allotments using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.² Retention of Channel 228A at Barnsboro would satisfy only the fourth allotment priority, "other public interest matters," whereas the proposed reallocation of Channel 228A at Gallitzin would satisfy the third allotment priority, "first local service."³

3. Gallitzin is not located within any urbanized area, but its 70 dBu signal would encompass approximately one percent of the Altoona, Pennsylvania, Urbanized Area. Under the circumstances, a *Tuck* analysis is not required.⁴

¹ *Barnsboro and Gallitzin, Pennsylvania*, 20 FCC Rcd 5860 (MB 2005) ("Notice").

² 90 FCC 2d 88 (1982), *recon. denied*, 56 RR 2d 448 (1983). The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3).

³ *Barnsboro* will continue to be served by Station WNCC(AM).

⁴ *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1998) ("Tuck").

9. Gallitzin is an incorporated community of 1,756 persons with an elected council and mayor. Vernal further states that Gallitzin supports its own police force, fire department, public library, and middle school. Gallitzin has its own post office and zip code (16641).

10. For all of the foregoing reasons, we conclude that the public interest would be served by reallocating Channel 228A at Gallitzin, Pennsylvania. Channel 228A can be allotted at Gallitzin in compliance with the minimum distance separation requirements of the Commission's Rules with a site restriction of 14.8 kilometers (9.0 miles) north of Gallitzin at reference coordinates of: 40-36-31 NL and 78-36-21 WL.

11. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. §801(a)(a)(A).

12. Accordingly, pursuant to the authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b), 0.283, and 1.420(i), IT IS ORDERED, That effective December 1, 2005, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED, with respect to the communities listed below, to read as follows:

<u>Community</u>	<u>Channel Number</u>
Barnsboro, Pennsylvania	266C
Gallitzin, Pennsylvania	228A

13. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a), the license of Vernal Enterprises, Inc., for Station WHPA(FM), Channel 228A, Barnsboro, Pennsylvania, IS MODIFIED to specify operation on Channel 228A at Gallitzin, Pennsylvania, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with 47 C.F.R. Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to 47 C.F.R. Section 1.1307, unless the proposed facilities are categorically excluded from environmental processing.

14. Pursuant to 47 C.F.R. Sections 1.1104(1)(k) and (2)(k), Vernal Enterprises, Inc., licensee of Station WHPA(FM), is required to submit a rule making fee in addition to the fee required for the applications to effectuate the changes specified above.

15. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send by Certified Mail Return Receipt Requested, a copy of this *Order* to the following:

John M. Pelkey, Esq.
Garvey Schubert Barer
1000 Potomac Street, N.W.
Fifth Floor
Washington, D.C. 20007

16. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

17. For further information concerning this proceeding, contact Deborah Dupont, Media Bureau,
(202) 418-7072.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau